

1 KENNER LAW FIRM, P.C.  
David E. Kenner, SBN 41425  
2 Brett A. Greenfield, SBN 217343  
16000 Ventura Boulevard, PH 1208  
3 Encino, CA 91364  
818 995 1195  
4 818 475 5369 - fax

5 WADE, KELLY & SULLIVAN  
733 W. 4<sup>th</sup> Avenue, Suite 200  
6 Anchorage, Alaska 99501  
(907) 561-7743  
7 (907) 562-8977 - fax

8 Attorney for Defendant Josef F. Boehm

9 IN THE UNITED STATES DISTRICT COURT

10 DISTRICT OF ALASKA  
11

12 Sally C. Purser,	)	
	)	DEFENDANT JOSEF BOEHM'S
13 Plaintiff,	)	SUPPLEMENTAL MEMORANDUM OF POINTS
	)	AND AUTHORITIES IN SUPPORT OF
14 v.	)	OPPOSITION TO PLAINTIFF'S SECOND
	)	MOTION FOR SUMMARY JUDGMENT
15 Josef F. Boehm, Allen K.	)	
Bolling, and Bambi Tyree,	)	
	)	
16 Defendants.	)	
	)	
17	)	
	)	
18	)	
_____	)	
	)	

19  
20 CASE NO.: A05-0085 (JKS)

21 **I. ADDITIONAL EVIDENCE AND ARGUMENT**

22 Boehm brings this supplemental brief laying out additional  
23 evidence and contradictions in which to show disputable issues of  
24 material fact and inferences to be drawn from the statements made by  
25 Purser and Tyree in support of summary judgment.

26 Boehm respectfully submits the following additional evidence to  
27 be considered:  
28

1           **1. Recorded transcript of Miranda Ditullio**

2           Ms. Ditullio submitted to a interview with Boehm's investigator  
3 Terry Shurtleff, *incorporated herein as Exhibit "A"*. Ms. Ditullio's  
4 statements were recorded in the presence of her parents and with her  
5 consent. Her statements contradict Purser's allegations and lend  
6 further support to the evidence presented in Boehm's initial  
7 opposition.

8           **2. Sworn Testimony of Dr. Jacobsen**

9           In response to Plaintiff's assertion that Dr. Jacobsen's report  
10 is not sworn testimony, Boehm's submits Dr. Jacobsen's sworn testimony  
11 confirming the contents of his report, relevant parts *incorporated*  
12 *herein as Exhibit "B"*.

13           **3. Declaration of Josef Boehm**

14           In response to Plaintiff's assertion that Boehm's responses to  
15 discovery are not sworn under penalty of perjury, Boehm submits a  
16 declaration specifically denying each of the allegations set forth in  
17 the Affidavit of Purser and Tyree, *incorporated herein as Exhibit "C"*.

18           **4. Declaration of Terry Shurtleff**

19           Mr. Shurtleff's declaration under penalty of perjury sets forth  
20 the circumstances under which his interviews were knowingly recorded,  
21 accurately recorded and accurately transcribed, *incorporated herein*  
22 *as Exhibit "D"*.

23           **5. Plaintiff's Expert Dr. Rose, Psychological Evaluation of**  
24           **Purser.**

25           Boehm submits Dr. Rose's report to bring out her inconsistent  
26 statements and lack of candor when being interviewed by her own  
27 expert. In addition, Dr. Rose's report is very telling when describing  
28

1 Purser's psychological state and character type, incorporated herein  
2 as Exhibit "E"

3 **6. Sally Purser Deposition Testimony**

4 Additional comparisons of purser's deposition testimony to  
5 statements given to her own expert dr. Rose reveal significant  
6 discrepancies and contradiction leading to a conclusion that inference  
7 must be drawn from present statements and genuine issues of material  
8 fact, relevant portions incorporated herein as Exhibit "F"

9  
10 **II. WITNESS MIRANDA DITULLIO RECORDED INTERVIEW WITH INVESTIGATOR**  
**TERRY SHURTLEFF**

11  
12 Miranda Ditullio submitted to a recorded interview at Chili's  
13 restaurant in Anchorage Alaska on June 1, 2004. Ms. Ditullio was  
14 present with her mother and step father James Matthews and Loanna  
15 Ditullio. They were aware that they were being recorded and were made  
16 aware that Terry Shurtleff was the investigator for Josef Boehm.

17 Ms. Ditullio testified that she had not been offered nor accepted  
18 money for her statements. *Ditullio Interview, Page 19*. A transcribers  
19 certificate is signed by Dana J. Kelly, CET. *Ditullio Interview, Page*  
20 *20*.

21 Ms. Ditullio's testimony further confirms the subject matter set  
22 forth in the declarations of Vince Blomfield and Tina Arndt. In  
23 addition, Ms. Ditullio details Purser and Tyree's scam to keep Boehm  
24 high on "dirty crack" cocaine and steal from him. Ms. Ditullio denied  
25 that Boehm provided drugs to Purser and details Tyree's blackmail of  
26 Boehm.

1 Ms. Ditullio's interview casts considerable doubt on the  
2 allegations set forth by Purser and Tyree, solidifies disputable facts  
3 and inferences to be drawn from Purser and Tyree's affidavits and  
4 further exposes Purser's motive to collect undeserved money from Boehm  
5 as follows:

6 **i. Relationship with Tyree and Introduction to Boehm**

7 Ms. Ditullio engaged in sex with Bambi Tyree when she was 16  
8 years old. *Ditullio Interview, Page 3*

9 Ditullio met Boehm through Tyree and initially told Boehm she was  
10 18 years old at the direction of Tyree. Upon learning she was 16 years  
11 old, Boehm attempted to kick her out of his residence. Ditullio  
12 continued to go back to Boehm's house with Tyree and at her direction  
13 and without Boehm's consent. *Ditullio Interview, Page 3-4.*

14 **ii Tyree Supplied the Drugs**

15 Tyree supplied Ditullio with drugs. Boehm never supplied her  
16 drugs and never offered drugs for sex. *Ditullio Interview, Page 3.*

17 Ditullio states that Boehm never provided drugs to anyone and  
18 further contends that Bambi Tyree and Leslie Williams provided all of  
19 the girls drugs. *Ditullio Interview, Page 6.*

20 **iii Tyree Controlled the Girls**

21 Boehm refused to let any underage girls around him. Even with  
22 women over 18 years old, Boehm was unable to perform sexually with  
23 them. *Ditullio Interview, Page 12.*

24 Ditullio identifies Tyree as controlling girls with drugs and  
25 forcing oral sex on her. *Ditullio Interview, Page 10.* She again  
26 identifies Tyree and Williams supplying drugs to young girls and using  
27 them as props for their scam. *Ditullio Interview, Page 13.*

1 Ditullio states that Al Bolling was pimping all of the young  
2 girls. She also believes that Purser became pregnant with Bolling's  
3 child. *Ditullio Interview, Page 7.*

4 **iiii Scam to Keep Boehm High and Steal from Him**

5 Ditullio States that Tyree and Williams were poisoning Boehm's  
6 drugs with something that would put him to sleep. *Ditullio Interview,*  
7 *Page 13-14.* Boehm would go out almost immediately. *Ditullio Interview,*  
8 *Page 14.*

9 Sally Purser would go to Boehm's house to steal money from him.  
10 Purser stole \$4,800.00 worth of travelers checks. Purser came to the  
11 house with Erin Axt. Boehm checked her identification and kicked her  
12 out. *Ditullio Interview, Page 5.*

13 Ditullio states that Boehm was being robbed and that everyone was  
14 out to hustle him. Tyree would never let anyone get near Boehm.  
15 *Ditullio Interview, Page 8.*

16 Ditullio Witnessed Tyree, Bolling and Williams black mail Boehm  
17 by threatening to tell the authorities that he had sex with minor Erin  
18 Axt. Boehm refused to pay.

19 Purser and others came to Boehm's house to steal drugs from him.  
20 Boehm never provided any drugs to Tyree, Purser or their female  
21 cohorts. *Ditullio Interview, Page 8.*

22 **III. PLAINTIFF'S EXPERT DR ROSE REVEALS ADDITIONAL CONTRADICTIONS OF**  
23 **PURSER AND IDENTIFIES CHARACTER TRAITS CONSISTENT WITH PURSER'S**  
**PAST AND PRESENT ACTIONS**

24 Plaintiff's Expert Dr. Rose conducted a psychological evaluation  
25 of Plaintiff and prepared a report based on his findings.  
26  
27  
28

1 Many of the events of Purser's life were withheld from Dr. Rose  
2 thus invalidating his findings as they relate to Plaintiff's true  
3 measure of damages and Boehm's alleged conduct.

4 Missing from Dr. Rose's report are the myriad of individuals for  
5 whom Purser:

- 6 1. smoked "crack" cocaine with;
- 7 2. obtained "crack" cocaine from,
- 8 3. traded sex for money and/or drugs, as well as
- 9 4. a detailed account of her involvement in several scams to
- 10 defraud men of their money and property with co-conspirator
- 11 Bambi Tyree.

#### 12 **A. PURSER'S FACTUAL CONTRADICTIONS**

13 Dr. Rose did note a number of findings which Purser omitted from  
14 her deposition testimony:

15 **Purser's uncle sexually abused her, made her go**  
16 **topless, took nude pictures of her and attempted**  
17 **to massage her on several occasions. Dr. Rose**  
**Report, page 2**

18 In her deposition, Purser denied any sexual misconduct by her  
19 uncle and went on to deny telling this to Dr. Rose raising yet another  
20 instance of Purser's flawed credibility.

21 **Q. When you were living with your uncle in**  
22 **Washington, were you ever sexually assaulted by**  
**him?**

23 **A. No.**

24 **Q. Did you ever tell anybody you were?**

25 **A. Yes.**

26 **Q. Who did you tell you were sexually assaulted**  
27 **by**  
28 **your uncle in Washington?**

**A. My mother.**

**Q. That was a lie?**

**A. Yeah, to my mom.**

Page 34, Lines 8-17

Q. Well, do you recall having an interview with the psychologist, a doctor rose?

A. Yeah.

Q. Do you remember telling Dr. Rose that your uncle physically abused you, or sexually assaulted you in Washington?

A. My uncle never physically sexually assaulted me.

Q. Did you ever tell that to Dr. Rose?

A. Not that I recall.

Page 34, Lines 24-25, Page 35, Lines 1-6

Purser testifies to whatever benefits her most at the moment.

Purser's statements and testimony are not credible or believable.

In her complaint Purser accuses Boehm of getting her addicted to drugs. Her statements to Dr. Rose are markedly different:

**Purser admits to becoming addicted to cocaine after a three month relationship with her boyfriend. When she took her first crack hit she had an "outer space feeling" and felt like "I could not get enough".** *Dr. Rose Report, page 5*

Purser has repeatedly alleged that Boehm got her addicted to "crack". Boehm has repeatedly denied this contention. Purser's statements to Dr. Rose indicate an immediate need for "crack" cocaine after her first experience. Purser also indicates an addiction as a result of a break up with her boyfriend.

In her deposition, Purser testified to living with boyfriend Jay Whaley while she was 16 years old. Purser went on to testify that he provided her "crack" cocaine and was a known drug dealer and escort service operator.

Purser has no evidence in which to suggest Boehm provided her drugs or that Boehm got her addicted to drugs other than her own self serving affidavit.

#### **B. PURSER'S CHARACTER TRAITS**

Dr. Rose goes on to assess Purser's character traits, validity of complaints and personality type associated with her testing results.

**"...She is experiencing significant psychological problems, although she may be exaggerating her complaints..."**. *Dr. Rose Report, page 8*

In describing the characteristics associated with Purser's clinical profile, Dr. Rose opines as follows *on page 8 of his report*:

1. They tend to manipulate others for their own gratification;
2. They rationalize their difficulties and blame others for their problems;
3. They behave in a somewhat aloof, cold and callous and uncompromising manner often attempting to advance themselves at the expense of others;

4. They are addiction prone to drugs and alcohol.

Purser's present and past actions are explained perfectly by the vary character traits associated with her profile as determined by her own expert!

#### **IV. DR. JACOBSEN GAVE SWORN TESTIMONY CONFIRMING THE FINDINGS IN HIS REPORT**

Plaintiff argues that Dr. Jacobsen's report should not be considered because it is not given under penalty of perjury. Dr.



1 Jacobsen confirmed the contents of his report in sworn testimony on  
2 May 5, 2005.

3 Dr. Jacobsen testified to Spending at least 17 hours evaluating  
4 Boehm in order to draft report and findings. Page 87, line 8-16

5 Dr. Jacobsen refers to Tyree's sworn testimony:

6 **She was specific that they were each using an**  
7 **ounce or more of cocaine -- crack cocaine per day**  
8 **and that they would use it in patterns of runs,**  
9 **which means continuous use without sleep, for up**  
10 **to a week. Page 99, lines 14-25**

11 **But Mr. Boehm didn't give me this history,**  
12 **because I think he -- he doesn't remember very**  
13 **well what was going on, it just being given to**  
14 **him, but Ms. Tyree was very, very clear that it**  
15 **was an ounce a day or so per person. Page 100,**  
16 **lines 1-3**

17 Dr. Jacobsen identifies a conspiracy against Boehm as a  
18 underlying set of facts explaining his findings:

19 **information is most consistent with a conspiracy**  
20 **between Ms. Tyree, Mr. Bolling and Mr. Williams**  
21 **to keep Mr. Boehm supplied with crack cocaine so**  
22 **as to get money, in other words, steal from him."**  
23 **"Available information is consistent with Mr.**  
24 **Boehm being among the victims of this conspiracy.**  
25 **Given the amounts of patterns of crack cocaine**  
26 **used by Mr. Boehm from about 2001 to 12/03, he**  
27 **would have been functioning in a survival-type**  
28 **mode where the only issue of importance would**  
**have been to continue to use crack cocaine with**  
**no consideration of possible future**  
**consequences."**  
*Page 113, lines 24-25, Page 114, lines 1-11*

V. PLAINTIFF'S ARGUMENTS SET FORTH IN REPLY TO OPPOSITION

i. **Plea Agreement**

Plaintiff argues that Boehm is attempting to somehow "back pedal" from the plea agreement.<sup>1</sup> Purser additionally argues that Boehm's discovery responses are factually inconsistent with the plea agreement.

Nowhere in the plea agreement does Boehm admit to any actions directed at Purser. Boehm's discovery responses and affidavit succinctly and specifically deny Purser's allegations. Purser has no evidence to confirm her allegations and relies entirely on the plea agreement as the basis for her findings.

ii. **Purser's Past Statements**

Purser's counsel suggests that plaintiff's recorded statements contradicting her present statements should be ignored.

Sally Purser acknowledged her past statements in her deposition and stated that her feelings have changed. Certainly her credibility should be allowed to be tested as a jury would be allowed to hear past contradictory statements.

iii. **Criminal Records and Drug Use By All**

Finally, Purser argues that Tina Arndt's declaration should be ignored because of a criminal record. Purser need look no further than herself, Tyree and every single witness to this action. This is a case where everyone smoked "crack" cocaine. Their perceptions are flawed and

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<sup>1</sup>Counsel is not attempting to use summary judgment in which to challenge the plea agreement. Counsel is well aware that a 18 U.S.C. § 2255 Motion is available but has not yet determined whether, when or how to pursue that issue, however, that issue is supported by compelling additional facts which recognize that there are clearly material issues of disputable fact.

1 memories diminished. Their understanding of consequences and ability  
2 to make sound judgment are non-existent. That alone creates inferences  
3 to be drawn from everyone's statements and triable issues of material  
4 fact.

5 **VI. CONCLUSION**

6 For the foregoing reasons, Defendant Boehm respectfully moves  
7 this honorable Court to deny summary judgment in its entirety.

8  
9 January 16, 2007

KENNER LAW FIRM, P.C.

10  
11 By: \_\_\_\_\_/S/\_\_\_\_\_

12 David E. Kenner,

13 Attorney for Defendant Josef F. Boehm  
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15  
16 By: \_\_\_\_\_/S/\_\_\_\_\_

17 Brett A. Greenfield,

18 Attorney for Defendant Josef F. Boehm  
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